THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 1st August, 2006

W.P.No.25757 of 2002

Between:

M/s. Maheswari Trading Co., rep. by
its Partner R. Nand Kishore … Petitioner

and

The Commissioner & Director of
Marketing, Andhra Pradesh,
Hyderabad and another. … Respondents

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ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the 2nd respondent in refusing to accept the Demand Draft for Rs.1,84,000/- towards first instalment for 'B' Class Mulgi in Bowenpally Agricultural Market Yard and not allotting the same and handing over the possession of the same to the petitioner as arbitrary and illegal.

It seems, the petitioner has valid licence issued under Section 7(1) of the Andhra Pradesh Agricultural (Produce and Livestock) Markets Act,1966 for doing wholesale business in rice and pulses. In view of the obligation on the part of the respondents as per Rule 27(xviii) of the Rules to acquire, hold and dispose of any moveable or immovable property for the purpose of doing business by the traders efficiently. Respondent No.1 constituted various market committees in the city of Hyderabad. There was a proposal to shift Hissam Gunj (Monda Market) in Secunderabad wherein the wholesale trade of vegetables and grains were going on, to avoid congestion. Regarding this, number of meetings were held between the respondents and the businessmen including the petitioner. It was agreed to shift the Monda Market to Bowenpally in an extent of Ac.23.00 gts of land. The Agricultural Market Committee, Hyderabad agreed to construct the shops as per the requirements of the traders and to allot the same to them as per their requirement. Hyderabad Agricultural Market Committee acquired certain land and constructed a market yard at

Bowenpally, Secunderabad. In the said market yard, 28 'A' class sheds (mulgies) and 31 'B' class sheds (mulgies) were constructed. The petitioner was offered with one of 'A' class sheds with 2610 sft at the rate of Rs.811/- per sft. The total value of the shed was estimated at Rs.21,17,000/- and the same was allotted to the petitioner by an Order dated 26-9-2002 of the 1st respondent. In the meanwhile, Government of Andhra Pradesh issued various Governmental Orders conferring certain incentives on the persons, who moved out of Monda Market on or before 15-11-2002 and 10% discount on the cost of the shed was also offered through G.O.Ms.No.426, Agriculture and Cooperation (Mktg.II) Department, dated 2-11-2002. However, it was made clear that the incentive discount will be available to only those who pay the cost, upto 15-11-2002; thereafter, those who do not pay will not only not get incentive discount, but will also have to face forcible eviction. Thereafter, a letter dated 12-11-2002 was addressed to the petitioner by the 1st respondent asking him to avail incentive discount on or before 30-11-2002 and further it was made clear that those traders who do not pay before 30-11-2002 will not only not get the incentive discount, but will also face forcible eviction as stated in the said G.O.

It is the case of the petitioner that in pursuance of the above communication, he submitted a letter dated 26-11-2002, though addressed to the Secretary, Agricultural Market Committee, Osmangunj, Hyderabad, in the Office of the 1st respondent, along with a cheque bearing No.260434, dated 26-11-2002 drawn on A.P. Mahesh Cooperative Bank, Market Street Branch, Secunderabad towards payment for the first instalment of 'B' class mulgi instead of 'A' class mulgi. He took a Demand Draft for the same amount on 30-11-

2002 and submitted the same to the 2nd respondent. Thus, it seems, there was delay of about 5 days in reaching the D.D. to the 2nd respondent. Under those circumstances, the Demand Draft submitted by the petitioner was returned, since it was received in the Office of the 2nd respondent with 5 days delay, through the letter dated 10-12-2002 of the 2nd respondent. Thereafter, the petitioner submitted the Demand Draft through another letter dated 10-12-2002 addressed to the respondents, but the 2nd respondent returned the same again vide his letter dated 20-12-2002, since it was sent after the due date.

There is no necessity of going into all the details. It is a fact that the petitioner, at the first instance, when submitted an application on 26-11-2002 it was accompanied by a cheque and the same was sent to the 1st respondent, though the letter was addressed to the Secretary, Agricultural Market Committee, Osmangunj, Hyderabad. Since as per the conditions of allotment, the petitioner is supposed to take a Demand Draft, he took the Demand Draft on 30-11-2002 and submitted the same to the Secretary of the 2nd respondent-Market Committee. According to learned counsel for the petitioner, the petitioner was informed that the application along with the D.D. should be filed only in the Office of the 1st respondent since the allotment is to be made by the 1st respondent; therefore, on the earlier occasion on 26-11-2002, the petitioner submitted the application to the 1st respondent. Thereafter, the petitioner obtained a Demand Draft on 30-11-2002 i.e. on the last date for submission of D.Ds. and sent the same to the 2nd respondent. Therefore, the *bona fides* on the part of the petitioner as to obtaining of Demand Draft within time cannot be doubted. There is no dispute as to submission of the application dated

26-11-2002 to the 1st respondent, by mistake. But, nonetheless, the Demand Draft dated 30-11-2002 was sent to the 2nd respondent properly, but with some delay, which cannot be taken serious note of.

In view of the above, the respondents are directed to reconsider the matter for allotment of the 'B' class shed (mulgi) in favour of the petitioner by receiving the Demand Draft, subject to his satisfying all other conditions as laid down in the allotment order. The petitioner shall submit the Demand Draft along with the application, within a period of one week from the date of receipt of a copy of this order and the respondents shall consider the same within a period of two weeks thereafter. It is needless to mention that in view of the interim orders granted by this Court on 19-11-2004 not to make any allotment in favour of third party or person, one shop in 'B' class is kept vacant.

With the above directions, the Writ Petition is disposed of. No order as to costs.

01-8-2006

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